

Chapter Title: Homogeneity, Punishment, and the Welfare State

Book Title: The Price of Freedom

Book Subtitle: Criminalization and the Management of Outsiders in Germany and the United States

Book Author(s): Michaela Soyer

Published by: University of California Press. (2024)

Stable URL: <https://www.jstor.org/stable/jj.8306304.5>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



This book is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License (CC BY-NC-ND 4.0). To view a copy of this license, visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>.



University of California Press is collaborating with JSTOR to digitize, preserve and extend access to *The Price of Freedom*

CHAPTER ONE

Homogeneity, Punishment, and the Welfare State

My plan in coming here was to displace by some knowledge, the legend of the United States that one learns abroad. That this is a crime ridden, gang ridden country is the German legend.

Uwe Johnson, author of *Anniversaries*, *New York Times*, April 23, 1967

Around Christmas 2021, I had the first conversation in more than two decades with my aunt. My father's younger sister had left southern Germany with her GI husband to move to Texas sixty years ago. At seventy-seven she was suffering from the early stages of dementia. As she was beginning to lose her short-term memory, she sought to reconnect with her German roots. When I spoke to her on the phone, she told me that she wished she could go back to Germany: "When I was young," she said, "I didn't know that America was that far away."

I cannot begin to conceptualize how strange Texas must have seemed to my aunt, who did not speak any English when she arrived there in the early 1960s. When I came to Chicago in 2006, I knew English well. I had grown up around American

pop culture and I was there to go to graduate school, not to escape the ruins of World War II. In the four decades between my aunt's and my own arrival, the United States and Germany have become culturally and politically more similar to each other. Nevertheless, even if Berlin and New York City have turned into global cities (Sassen 1991), both Germany and the United States retain historically specific and culturally contingent social and economic structures.

Historical contingencies and competing hypotheses about nation-building turn the comparative analysis of punitive structures in Germany and the United States into a daunting exercise. Joachim Savelsberg is one of the few social theorists whose work takes on the idiosyncratic social and institutional practices that have shaped criminal justice policies in both countries. Savelsberg (1994) seeks to understand why Germany became less punitive than the United States, even though crime rates increased in both countries. For Savelsberg the answer to this empirical puzzle is partly a cultural one: The United States and Germany adhere to very different ideas about the individual and the individual's role in society. These ideological presumptions inadvertently generate specific interpretations of the cause and prevention of criminal behavior.

Comparing Germany and the United States on multiple social dimensions (i.e., the public sphere, academia, the political sector, the institutionalization of domination, social structure, and conflict), he concludes that public discourse translates into policy much more directly in the United States than in Germany (924–925). The jury trial, for example, sets the stage for communal judgment. In contrast to Germany, US district attorneys are subject to an electoral process. Roughly equivalent government officials in Germany are appointed as civil servants whose

positions are secured for life (*ibid.*).¹ Savelsberg also understands political decision-making in Germany to be beholden to the Weberian logic of “legal domination.” Germany’s bureaucratic structure, he argues, prevents policies that respond to soaring crime rates with harsher sentencing.

Like Savelsberg, James Q. Whitman (2001) believes that a “strong state” has protected Germany and France from becoming as punitive as the United States during the last decade of the twentieth century. According to Whitman, bureaucracies in both countries have enabled an individualistic approach to punishment that leaves room for “mercy” (14). He also argues that Germany and France fought against differential treatment of the upper classes for centuries. Germany and France, he writes, used to punish the wealthy more humanely than the lower classes. As both countries have sought to flatten social hierarchies, they have expanded “soft” punishment to everyone (11).

Where Savelsberg focuses his analysis on contemporary Germany, Whitman takes a historical perspective. Attempting to fit the years between 1933 and 1945 into his path-dependent analysis, he maintains that the Nazi regime continued to individualize punishment. Whitman insists that the criminal justice system during the Third Reich aspired to reintegrate prisoners incarcerated for conventional crimes as members of the German “Volk”—even if it did so while exercising harsh forms of punishment (141).

German historians who have studied “career criminals” as “forgotten victims” of the Nazis present a different perspective. In 1933, the Nazi regime introduced “security confinement” into the repertoire of sentencing. The concept has survived Germany’s defeat at the hands of the Allies in 1945. To this day, “security

confinement” presupposes that certain offenders are incorrigible and may have to be held indefinitely. During the Nazi dictatorship security confinement was also a tool to manage the “biological stock” of the German people. Being incarcerated without a release date prevented “inferior” individuals from marrying and having children (Lieske 2016, 53–54).

Savelsberg and Whitman both argue that a detached bureaucracy insulates Germany from giving into popular demands for harsher forms of punishment for criminals. Defining German bureaucracy and its tradition to exercise power “*sine ira et studio*” (Weber 1978) as a bulwark against harsher punitive politics becomes more ambivalent once we include the years between 1933 and 1945 in our analysis. In light of the Nazi atrocities, social theorists, historians, and philosophers have famously argued the exact opposite: the German bureaucratic machine played a crucial part in the execution of the “Final Solution.” Without a state apparatus able and willing to execute orders without moral concern, the finality and scale of the Holocaust could not have been accomplished (Adorno and Horkheimer 1944; Hilberg 1999; Arendt 1963; Bauman 1989).

The institutional and individual continuity in Germany after World War II is widely documented as well. The postwar German criminal justice system, in particular, was inevitably intertwined with the institutions and personnel of the Third Reich (Hölzl 2002, 2019). Nevertheless, implementing a more humane criminal justice system was politically inevitable. The “new” Germany needed to demonstrate to the Allied powers that it had truly changed. The bureaucratic apparatus followed suit and reoriented itself quickly to the new political reality (Frei 2014; Aust 1985).

THE MAKING OF A LENIENT CRIMINAL
JUSTICE SYSTEM

Like Savelsberg and Whitman, I also believe that structural-functional theories of punishment fail to grapple with the complexity of cultural contingencies. However, I maintain that Durkheim's concept of punishment as strengthening "collective conscience" provides useful analytical leverage when we juxtapose homogenous versus heterogenous societies. According to Durkheim (1964), homogeneity forms the basis of mechanical solidarity—a solidarity of likeness (70). In *The Division of Labor in Society*, Durkheim connected the type of solidarity prevalent in a society to the kind of punishment a community gravitates toward. For Durkheim, "punishment" is a form of boundary maintenance, allowing the group to reiterate and solidify their norms and values. Consequently, a behavioral choice is deemed "criminal" if it violates the "collective conscience." As he put it, "Crime brings together upright consciences and concentrates them" (102).

Durkheim also believed that societies connected through a "solidarity of likeness" respond repressively to violations of their "collective conscience." Any act that questions the normative assumptions of such a group threatens the group's existence and cannot be tolerated. Highly developed and heterogeneous societies, by contrast, operate according to the principles of "organic solidarity." Those societies are connected through the shared purpose of the division of labor and are supposed to be more tolerant of differences and therefore less punitive (1964, 112–13).

When Durkheim developed his dichotomy between "organic" and "mechanic solidarity," he juxtaposed what he saw as "primitive" social groups with the industrializing societies of Western

Europe. Durkheim's colonialist fascinations may not have aged well, but the *Division of Labor* can still provide a useful framework for comparative analysis. For example, both the United States and Germany operate according to the rules of global, advanced capitalism. The societies of both countries should follow principles of organic solidarity and their respective punitive processes should be conciliatory rather than retributive. For obvious reasons, Durkheim's model fits neither the United States nor Germany particularly well. With around six hundred people incarcerated per one hundred thousand inhabitants, the United States has famously become the country with the highest incarceration rate in the world (Carson 2020). In comparison, Germany's incarceration rate is much smaller and hovers at 76.2 people per one hundred thousand inhabitants (SPACE 2016). Paradoxically, Germany's low incarceration rates don't imply a more tolerant society. Through its many iterations, Germany has continued to define itself as a *Gemeinschaft*, systematically excluding immigrants from the *Volk* (Tönnies, 1957; see also chapter 2). Even though German society tends to be connected by a "solidarity of likeness," its justice system seems to be far less punitive than the United States.

The tension between "theory" and complex "praxis" comes even more into focus when we look at the historical circumstances engulfing Germany during and after World War II. Germany's commitment to the rehabilitative ideal is a fairly recent development—especially when we include the former GDR. Until 1989, the GDR government incarcerated political prisoners under inhumane conditions. In the infamous Stasi prison "Bautzen II" in Saxony, solitary confinement was the norm. Prisoners were referred to by their numbers not their names (Klewin and Wenzel 2003). During the Ninth Congress

of the Communist Party in 1972, the Western German magazine *Der Spiegel* quoted Erich Seitz, then attorney general of the GDR, who stated that the government should create an “unforgiving atmosphere” (*Atmosphäre der Unversöhnlichkeit*) and use “unremittingly harsh measures” (*unveränderte Strenge*) against all criminal elements. He was particularly concerned, though, with “enemies of the current order.” Those should be treated without forbearance (*ohne Nachsicht*).²

The blatant human rights violations of the GDR allowed the Federal Republic to position itself more effectively as a changed country that had put the atrocities of World War II behind itself. Under the tutelage of the United States, Western Germany had embraced the doctrine of protecting “human dignity” as the ultimate principle of governance and legal proceedings in 1949. Germany’s newly found commitment to “human dignity” stood in contrast to the uncompromising, self-destructive inhumanity of the Third Reich. As Ian Kershaw described in his account of the Reich’s final months, local police forces continued to execute “traitors,” even with American tanks in sight (2011).

Between 1933 and 1945, so-called “special courts” executed more than 5,600 people for political crimes. During the same time frame, military courts executed more than thirty thousand people for desertion, refusal to serve, or undermining military goals (Tuchel 2019).³ In 1949, when the new parameters of the German constitution were drafted, a majority of Germans (74 percent) still wanted to retain the death penalty as a mode of punishment.⁴ In the end, an unlikely coalition across party lines, including communists and right-wing nationalists, voted in favor of Article 102,⁵ thereby abolishing the death penalty (see the survey of the demographic institute in Allensbach cited in Schlieben 2019; von Kittlich 2019).⁶ Curiously, and some

historians argue intentionally, the earliest beneficiaries of Article 102 (then 103), were Nazi henchmen, put on trial by the German government during the 1950s and 1960s (Evans 1997).⁷

In 1958, the German government decided to concentrate the investigation of Nazi crimes in a single government institution—the “Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes” in Ludwigsburg, Baden-Württemberg. The investigators in Ludwigsburg had to rely on local district attorney offices to follow up on leads and to send information back to them. The reluctance of the bureaucratic machine to investigate Germans implicated in the Nazi war crimes, is on full display in the case of former SS-Oberscharführer, Wilhelm Boger.

Even in a place as merciless as Auschwitz, Boger was known for his brutality. Prisoners referred to him simply as “Der Tod” (Death) and he was eventually sentenced to life in prison during the Frankfurt Auschwitz trials in 1963 (Pendas 2010). A skilled torturer, Boger had been in charge of collecting intelligence among Auschwitz prisoners to prevent a potential uprising. After Germany’s defeat, Boger was captured by US forces, who planned to hand him over to Polish authorities, but he managed to escape during his transport to Poland. After living for several years under an assumed identity, Boger eventually returned to his home state, Baden-Württemberg. There he felt comfortable enough to use his real name again, and he settled down with his family in the small village of Hemmingen (Klee 2013).

Had it not been for the “career criminal” and notorious troublemaker Adolf Rögner, Boger would likely have never been held responsible for his crimes. Born in 1904, Adolf Rögner had been incarcerated repeatedly for fraud during the Weimar Republic and the Third Reich. Deemed incorrigible, he was first sent

to the concentration camp in Dachau and later transferred to Auschwitz, where he encountered Boger. After the war, Rögner recidivated and was again sentenced to prison for fraud. As the German postwar “economic miracle” took off without him, he kept track of the many former Auschwitz guards that had gotten away. Rögner not only knew that Boger had escaped; he had also learned that the former SS sergeant did not hide anymore. In 1958, Rögner, then incarcerated at a prison in Baden-Württemberg, sent a letter to the district attorney’s office in Stuttgart reporting the whereabouts of a potential war criminal. The district attorney’s office confirmed that Boger existed and indeed lived in a small town. Then the investigation fizzled. The district attorney’s office slow-walked further scrutiny of Boger’s past until a more prominent and less ambiguous Auschwitz survivor, Hermann Langbein, intervened. As the head of the Auschwitz Committee,⁸ he called a press conference, revealed Boger’s place of residence, and pointed to the district attorney’s inaction. Following the public attention that was drawn to the matter, Boger was eventually arrested and interrogated in October 1958—seven months after Rögner had sent his initial letter.⁹

Boger was one of six defendants sentenced to life in prison during the Auschwitz trials. The majority of his codefendants were treated more leniently. Former SS sergeant Hans Stark, another guard Rögner identified, had served in Auschwitz when was nineteen years old. Under the new laws of the Federal Republic, he was considered a minor at the time he had committed his crimes and had to be tried as a juvenile.¹⁰ Stark admitted in court to gassing 250 Jews and participating in the shooting of Soviet prisoners of war. One witness, whose father was among Stark’s victims, testified that Stark had ordered a Jewish prisoner to chase fellow inmates into a ditch filled with water. They

were supposed to be drowned there. The inmate, who had carried out Stark's orders at gunpoint, started screaming. Stark shot him dead.¹¹

Sentenced under German juvenile law, Stark was handed a ten-year prison sentence. After serving three years, he was released in 1968. An obituary commissioned by his former employer and published in the *Darmstädter Echo* in 1991 testified to his seamless reintegration. After his release, he worked for the chemical company Merck until his retirement in 1983. The obituary also praised his personality and his expertise in crop protection. In the end, Stark, who had killed hundreds of Jews, spent significantly less time incarcerated than Adolf Rögner a nonviolent offender, whose mental and physical health had been severely impacted by his experiences in Dachau and Auschwitz.¹²

Germany's treatment of Nazi perpetrators was in line with the United States' pragmatic approach to denazification that emerged after the Nuremberg trials. Hoping to utilize Western Germany as an ally against Russia, the US government was compelled to fast-track rehabilitation of second- or third-tier Nazi officials. Balancing continuity and necessary political change, the United States, Great Britain, and France still sought to prevent a "re-nazification" of Germany (Rigoll 2017). The establishment of a more humane judicial system, under the auspice of the Western Allies, was supposed to be safeguard against a potential resurgence of fascism.

Meanwhile, the German people, united by the sins and trauma of World War II, yearned for collective and individual redemption (Jähner 2019). Subordinating the execution of justice to the protection of human dignity solved two problems at once: It underscored Germany's presentation as a "reformed" country, while limiting serious punishment of Nazi war criminals.¹³

It became apparent quickly that the benefits of rehabilitation and humane punishment were not extended equally across the political spectrum. Dating back to the Weimar Republic, the German judiciary had always been more tolerant of violence from the Right than the Left (Gumbel 2012). A case in point was the willingness and capacity of the German government to expand executive powers and increase the reach of law enforcement when terrorists from the Left threatened the status quo of the Federal Republic. During the 1970s, the Red Army Faction (RAF), an outgrowth of the student movement, assassinated prominent industrialists and politicians. Under Chancellor Helmut Schmidt, the government enacted new anti-terrorism laws and established investigative tactics akin to racial profiling to identify potential RAF supporters.¹⁴ Until today, German left-leaning intellectuals wonder whether the German justice system turns “a blind eye to right-wing extremism.”¹⁵

In terms of Durkheim’s theory, Germany’s example indicates that mechanical solidarity and a lenient criminal justice system can coexist when those who have committed crimes represent—at least in part—the norms and values of the majority. During the 1970s, when terrorism from the Left posed a real threat to the political and economic establishment, the government bureaucracy responded with astonishing flexibility and speed (Rigoll 2013).¹⁶ Similarly, as Germany has become more diverse, the country’s rehabilitative approach to punishment has been questioned by the political Right (see chapter 2). Although sentencing has remained comparatively lenient, exclusion and labeling manifest in subtle but consequential ways for those who are not ethnically German (Spindler 2011). The young men I interviewed were acutely aware of their outsider status, their lack of belonging, and their limited chances of upward mobility.

“SUPERPREDATORS” AND THE “FREE MARKET”

In the United States, punitive processes have swung back and forth like a pendulum between retribution and rehabilitation. During the 1960s, rehabilitation and reintegration were at the forefront of penal policies (Rubin 2019; Garland 2001). The most recent punitive turn has been documented extensively. The war on drugs, the fear of “superpredators” (DiIulio 1995), and opportunistic neoliberal governance set off a twofold development: the destruction of the welfare state and the expansion of the criminal justice system (Wacquant 2009). As an unintended consequence of these institutional changes, the criminal justice system has taken over functions of the welfare state and has become a major provider of social services for the poor (Haney 2010; Sufrin 2017). My first book, *A Dream Denied* (2016), elaborates on this phenomenon in great depth. Analyzing the pathways of young men through two juvenile justice systems in Boston and Chicago showed that punishment and welfare provision were entangled in unfortunate ways. The young men I interviewed had to be “punished”—sent to detention center or juvenile prison—to receive comprehensive treatment of mental health challenges or educational support. As I wrote in 2016, “The judicial system was often the only governmental organization providing even nominal support for inner-city children and their families. Without their probation officers, the teenagers were at greater risk of slipping through the cracks of an underfunded social welfare system” (3). The exact causes of exploding prison population in the mid-1990s are still up for debate (Paff 2017). It is indisputable, though, that mass incarceration has done disproportionate damage to already marginalized African American and Latino families (Western 2006; Clear 2007;

Alexander 2010; Western and Pettit 2010; Wakefield and Wildemann 2013; Lee and Wildemann 2021).

Using Durkheim's assumptions as a heuristic tool reveals the absurdity the United States confront today: the country should be a society held together by "organic solidarity." The direct and indirect economic implications of incarcerating a significant amount of the population contradict American ideals such as the "free market economy," "small government," and "meritocracy."

As a structural functionalist, Durkheim did not have a particularly fine-grained concept of the different motivations that drive social action. He believed that individual motivations are inevitably linked to universal, collective goals (106). His theory therefore fails to capture the complexity of modern societies in which different institutional contexts are aligned with different types of social action. Collaboration in the market place, for example, is an instrumental rational act with the goal of maximizing one's utility (Weber 1978). Solidarity established in a market place may not require empathetic, intersubjective role-taking (Mead 1967; Habermas 1985). The different factions may work together for the shared goal of profit, but they are unlikely to develop a "collective conscience" that overcomes gender, race, and class divisions.

For example, a white male manager does not have to actively "collaborate" with his female African American administrative assistant. He has power over her (Blau 1986), the kind of power that forces her to collaborate with him. This hypothetical "boss" may treat his employee with courtesy, but in the end their relationship is asymmetrical. Even if we consider a relationship among equals, the tolerance we can muster for a productive colleague that looks different, worships differently, and speaks with

an accent may fade away quickly once this person does not fulfill a “useful” function for us anymore.

While the United States may cease to be a majority white country in the near future, the ethnic and racial divisions within it persist. Intermarriage rates remain low, segregation continues to be high, and the white population still holds the majority of wealth and power. In a way that is very different from the situation in Germany, those who are poor, the “misfits” and “outsiders,” not only look very different, they also embody different norms and values than the disproportionality white upper-middle-class center of power. Punishing those “outsiders” harshly makes sense psychologically because it justifies the current status quo without any economic costs for the higher echelons of American society.

Turning Durkheim’s logic around, I argue that the United States punishes differently than Germany because it is a more heterogenous country. Being held together by the instrumental rational logic of the market place has made the United States more tolerant of different lifestyles, norms, and values as long as people are actively contributing to the nation’s surplus value (Merton 1938). At the same time, US society is much less tolerant than Germany’s “community” of those who are not participating in the labor market to maximize their economic gain.

THE WELFARE STATE

Punishment in both countries cannot be fully understood without an investigation of its ancillary—the welfare state. Welfare services and punishment cover overlapping populations and utilize similar tactics to manage the marginalized. The Quakers who founded Eastern State Penitentiary saw themselves as

reformers whose strategies were supposed to convert “deviants” into productive members of society (Rothman 2008). Likewise, the juvenile justice system was established as an attempt to develop an alternative to the adult criminal justice system to “uplift youth” rather than punishing them (Mack 1909). Under the guise of rehabilitation, welfare provisions have always remained a staple of modern punishment even during the era of mass incarceration (Phelps 2011). Today’s abolitionists also envision a system in which punishment is replaced with comprehensive social services for vulnerable populations (Davis 2003).

Replacing punishment with welfare services addresses the immediate suffering abject poverty causes (Soyer 2018). At the same time, welfare measures—like punishment—are designed to discipline their constituency. The modern welfare state is supposed to provide a temporary stopgap that allows recipients to restore their contribution to economic production. But if participation in the workforce is unfeasible, access to social services appeases the poor, prevents collective organization, and secures their docility (Plath 1977; Foucault 1975; Piven and Cloward 1993; Soss, Fording, and Schram 2015). Even measures directed at upper-middle-class clients incentivize compliance. For example, the interest free German student loan program rewards fast repayment with partial debt cancellation.¹⁷

Those who rely on welfare to meet their basic needs have to operate within narrow parameters. The US Supplemental Nutrition Assistance Program (SNAP) limits items that can be purchased with government funds. In addition to liquor and cigarettes, prepared meals, pet foods or cleaning supplies are ineligible purchases under the SNAP program as well.¹⁸ In order to receive Section 8 housing assistance, tenants, in renting their apartments, have to meet strict conditions.¹⁹

Inevitably, public discourse surrounding welfare reform centers on limiting access to those who are “truly” deserving of help, rather than wasting resources on people who are simply “too lazy” to enter the workforce. In the United States, the rhetoric about the abuse of welfare privileges has centered on stereotypical depictions of minorities, propagating, most infamously, the myth of the African American “welfare queen.”²⁰ Calls for dismantling welfare in the United States became synonymous with cutting off support for “promiscuous” inner-city minority women, who supposedly used government checks to support their lavish spending. The welfare reform in 1995 turned welfare into workfare. Provisions like the Earned Income Tax credit were supposed to encourage labor force participation, and the time limits put on Temporary Assistance for Needy Families (TANF) effectively prevented anyone but the most desperate from applying (Edin and Shaefer 2015).

In Germany the welfare state has never been completely dismantled. Even limited attempts to do so were met with extensive public outrage (Rucht and Yang 2004). Those pushing for reform believed that generous and unlimited unemployment benefits disincentivized finding work. In contrast to the United States, the debate in Germany lacked a racial undertone. Now, it may have been the case that twenty years ago, Germans still shied away from an open discourse about race and eligibility. More likely, however, race was irrelevant because those deemed least eligible—refugees—are blocked from legal employment and never benefited from the generous unemployment benefits that were in place prior to 2005.

When it comes to long-term unemployment, ethnic Germans have been the main beneficiaries of unemployment insurance. According to the ministry of labor, almost 60 percent of those

who struggled with long-term unemployment were ethnically German (Fritz, Lüdeke, and Wolff 2020).

The policy changes, referred to as Hartz IV reforms, took effect in 2005 and undeniably strengthened the welfare bureaucracy's punitive abilities with regard to citizens. While Germany has retained unlimited welfare benefits, the state now distinguishes between those who are temporarily unemployed, those who are likely to reenter the workforce, and those who struggle with long-term unemployment. Currently, benefits are divided into several different, rather complex, stages of support: "Unemployment I" (Arbeitslosengeld I) payments cover approximately 60 percent of your final paycheck. Payments also depend on the length of prior employment. Those who suffer from prolonged unemployment receive "Unemployment II" (Arbeitslosengeld II). People too old or otherwise unable to work a minimum of three hours daily are eligible for social welfare payments (*Sozialgeld*). Overall criteria for receiving unemployment payments, however, were tightened. For example, refusing what is deemed acceptable employment, job training, or community services now leads to reduction or even loss of benefits (Ochel 2005). The macroeconomic impact of the reforms on the German labor market are contested among economists. While some argue that the reforms have reduced unemployment significantly, others maintain that their effect on economic recovery has been modest (Hochmuth et al. 2019; Odendahl 2017).

Most importantly for our current analysis, the German government did not move to a workfare model. In fact, on January 1, 2023 a significant reform of the social safety net expanded payments and eased some of the punitive measurements Hartz IV introduced. In an effort to destigmatize welfare payments, the government now refers to *Bürgergeld* (money for citizens) instead

of *Sozialgeld*. Rather than “pushing” people into work, the new law emphasizes job training to ensure long-term employment. The welfare system now also covers apartment costs (rent or mortgage) irrespective of its square footage for one year. The community clearly continues to assume responsibility for those who cannot take care of themselves. The worst-case scenario in the Germany system—being a recipient of *Bürgergeld*—still ensures a minimum level of subsistence.²¹

Many scholars have argued that it is almost impossible to offer truly rehabilitative services from within a punitive framework (Zimring 2005; Fader 2013; Soyer 2016, 2018; Cox 2018). Using a welfare state like Germany as a counterexample to the United States refines this perspective. In southern Germany, the juvenile justice system models rehabilitative measures in prison after social services offered on the outside. For the German group prison is a restrictive experience but it resembles the group’s prior encounters with the welfare state (see chapter 2).

The exact opposite is the case in the criminal and juvenile justice system in the United States. To manage those who struggle with the “side effects” of poverty (mental health problems, addiction, lack of education, fractured employment history), the criminal justice system has to create a unique social service infrastructure. Juvenile justice or criminal justice facilities offer educational and mental health support that are out of reach in the community (Soyer 2016; Sufrin 2017; Cox 2018). In a homogenous society like Germany, where “the other” is still assumed to be similar enough to the majority to warrant communal concern, punishment is exercised in form of restrictive social services. Consequently, Germany prisons operate as extensions of the welfare state, while the United States has limited the centralized administration of social welfare to prisons. Spending

money on the carceral state is politically far less controversial than allocating expenditures to welfare for the poor. When money is allocated to services in prisons, it is done so under the guise of public safety. Offering social services in prison is also an opportunity to reach a population that would be otherwise cut off from any government support. Finally, the managerial benefits of providing social services in prison cannot be overstated. Group therapy, work, and educational opportunities keep the incarcerated occupied and are a useful disciplinary tool to control a potentially volatile population (Foucault 1975).

While it goes too far to claim that multiculturalism undermines the politics of redistribution (Barry 2001; see Banting and Kymlicka 2004 for a counterargument), universal redistribution of wealth is undoubtedly more difficult to negotiate with opposing interests in play. In terms of population diversity, the United States is a much more complex society than Germany. According to the latest census, almost 14 percent of the US population is foreign-born and only 60 percent of the population define themselves as white non-Hispanic.²² Out of a population of eighty-three million, only 11.4 million people live in Germany without holding a German passport. Of these, about 4.8 million come from other EU countries while roughly 1.4 million hold Turkish citizenship. From the perspective of the US census measurements of race and ethnicity, the German population largely consists of different shades of white Europeans.²³

While they are compelling, the historical pathways and cultural idiosyncrasies of punishment and welfare should not be reduced to population homogeneity as the single explanatory variable. Monica Prasad (2012), for example, convincingly argues that the geographic idiosyncrasies of the United States, the vastness of the land, and the fertility of its soil generated

a specific brand of social policies designed to manage overproduction and collapsing prices rather than resource scarcity. In Germany, the establishment of a welfare state can be interpreted as the result of Otto von Bismarck's reactionary attempt to combat the kind of socialist ideas he believed threatened Prussia's constitutional monarchy (Steinberg 2011). Consequently, juxtaposing Germany's homogeneity with the heterogeneous society of the United States does not offer a causal explanation. Instead, the comparative approach provides a new perspective on divergent punitive trajectories. Focusing on population diversity also offers a corrective view on popular narratives that present prisons in Finland, Norway, or Germany as a model for criminal justice reform in the United States.²⁴ Acknowledging the complexity, size, and diversity of the United States should therefore induce us to speak in a cautionary manner when using European countries as a benchmark for evaluating the American criminal justice.

CONCLUSION

By investigating the tensions between Durkheim's theory and the complex cultural and historical contingencies at play in Germany and the United States, this chapter relativizes the image of Germany as a blueprint for criminal justice reform in the United States. Germany's benevolent criminal justice system was created on the heels of one of the most destructive and brutal political dictatorships ever to have existed. Under the supervision of the Allied forces, Germany reinvented itself as guardian of human rights. Immediately after World War II, German society was more homogenous than ever. Punishment, as well as welfare benefits, were created solely for a community

of ethnic Germans. In their collective guilt and trauma Germans relied on a “solidarity of likeness” to rebuild their country. As Germany has become more diversified, however, immigrants and their children have inadvertently benefited from a justice and welfare system built on the assumption of cultural homogeneity. Offering immigrants access to social citizenship and a relatively lenient justice system does not imply that immigration is seen as an asset. On the contrary, immigrants and their children are supposed to assimilate completely while never being considered truly German.²⁵

On the surface, the United States could be an almost ideal-typical representation of a society bound by “organic solidarity.” And yet successful economic cooperation of people from different ethnic and racial background has not resulted in a more tolerant justice system. The focus on economic success, in the absence of true intersubjectivity, may have, in fact, enabled harsh punitive structures. Not being bound by communal responsibility derived from shared cultural heritage or trauma can make it easier to cast judgment on those who have committed crimes. In the absence of a centralized welfare state, the US criminal justice system has grown enormously. It now executes the kind of social services and disciplining functions Germany has front-loaded to the welfare state.

The tension between Durkheim’s theory and the complex reality of punishment in Germany and the United States reveals that the German model does not provide an easy solution for criminal justice reform in the United States. Immigrants in Germany are stigmatized and often thwarted on their path to upward mobility. Residents who have a migration background are expected to assimilate completely to German culture without any expectation that their children or grandchildren ever be

considered part of the community. Those advocating for criminal justice reform in the United States therefore need to be aware that less punitive systems do not always presuppose tolerance. Germany and other Nordic countries may have maintained a lenient punishment regime and generous welfare benefits because they remain comparatively small, homogenous societies that mostly take care of those who are like “them” (Lappi-Seppälä 2007). In the following chapters I will explore how these different cultural assumptions, economic realities, and punitive practices shape the respondents’ in both countries identity and positionality.